



2026:DHC:4230



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 11.05.2026
Judgment pronounced on: 14.05.2026

+ **CRL.A. 146/2018**

SONU @ HAS NAIN

.....Appellant

Through: Ms. Manika Tripathy, (DHCLSC)
with Mr. Aman Kumar, Advocate.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for the State.
Mr. Abhinav Aggarwal, Amicus
Curiae.
Mr. Shashank Garg, Sr. Advocate
with Ms. Aadya Antya, Amicus for
Victim.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) read with Section 482 of the Criminal Procedure Code, 1973 (the Cr.P.C.), the sole accused in Sessions Case No. 440935 of 2016 on the file of the Additional Sessions Judge-04, Dwarka Court, New Delhi,



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assails the judgement dated 15.12.2017 and order on sentence dated 20.12.2017, as per which he has been convicted and sentenced for the offences punishable under Section 506 Part II of the Indian Penal Code, 1860 (the IPC) and Section 5(l) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (the PoCSO Act).

2. The prosecution case is that on 01.02.2014 at about 03:00 p.m and 03.02.2014 at about 04.00 p.m. at M-49, Chankya Place, GaliNo.2, 25-foot road, Near Sita Puri, New Delhi, the accused trespassed into the house of PW1, criminally intimidated her and committed penetrative sexual assault upon her. Hence, as per the charge sheet/final report, the accused is alleged to have committed the offences punishable under Sections 376, 506,450IPC, and Section 6 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS/FIR of PW1 given on 06.02.2014, Crime no. 73/2014, Dabri Police Station, i.e., Ext.



PW8/A FIR was registered by PW8, Women Assistant Sub-Inspector. PW17 Women Sub-Inspector conducted investigation into the crime and on completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the aforementioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, *vide* order dated 21.04.2014, framed a Charge under Sections 450, 506 Part-II IPC and Section 5(l) read with Section 6 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 17 were examined and Ext. PW1/A-B, Ext. PW2/A, B, D1 to D3, Ext. PW4/A-B, Ext. PW5/A, Ext. PW6/A, Ext. PW8/A-B, Ext. PW9/A-C, Ext. PW11/A-B, Ext. PW14/A-E, Ext. PW16/A-C, Ext.



PW17/A-E, Ext. A-1 and Ext. P-1 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that he had been helping the parents of PW1 in buying vegetables etc., on various occasions. When he stopped helping them, they falsely implicated him in the present case. The accused also submitted that though he was on talking terms with PW1, he never had any sexual relationship with her.

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance



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of the said provision does not, *ipso facto*, vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

8. No oral or documentary evidence was adduced by the accused.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, *vide* the impugned judgment dated 15.12.2017 held the accused guilty of the offences punishable under Section 506 Part-II IPC and Section 5 (1) and Section 6 of the PoCSO Act. *Vide* order on sentence dated 20.12.2017, sentenced him to undergo rigorous imprisonment for a period of 10 years and to fine of ₹2,000/-, and in default of payment of fine, to simple imprisonment for a period



of 3 months for the offence punishable under Section 6 of the PoCSO Act; and to rigorous imprisonment for a period of 2 years for the offence punishable under Section 506 Part-II IPC. The sentences have been directed to run concurrently. Aggrieved, the accused has preferred this appeal.

10. It was submitted by the learned *Amicus Curiae* that though the incidents took place on 01.02.2014 and 03.02.2014, the FIR was registered after a delay of three days, that is, on 06.02.2014. No explanation for the said delay has been provided by the prosecution. It was also submitted that the accused has been falsely implicated due to disputes between him and the parents of PW1. Therefore, it was submitted that the accused is entitled to the benefit of doubt.

11. *Per Contra*, the learned Additional Public Prosecutor supported the impugned judgment and submitted that PW1 has remained consistent throughout her testimony and, therefore, there



is no reason to doubt her version. It was further submitted that the age of PW1 has not been challenged by the defence. The FSL report further corroborates the testimony of PW1. There is no infirmity in the impugned judgment calling for an interference by this Court.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/A FIS/FIR of PW1 recorded on 06.02.2014 reads thus:- She is studying in Class VIII at A-1 Government Girls Senior Secondary School, Janakpuri. Her father works in *beldari*, and her mother as thread weaver. They live in a rented house, and the owner of the said building is one Munna. There are 24 rooms in



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the building. In one of the rooms, a tenant named Sonu also resides. His permanent address and father's name are Salim, R/o Village Samohota, Police Station Koppa, District Chhapra, Bihar. He is approximately 25 years old. On Saturday, that is, 01.02.2014 at 03:00 p.m, Sonu called on their home phone, and she answered the call. At that time, no one else was at home. Sonu told her that if she did not have physical relations with him, he would kill her brother. At 03:30 p.m., Sonu came to their house and threatened her to open the door. She opened the latch. Sonu entered the house, forcefully removed her clothes, and raped her [मेरे ज़बर्दस्ती कपडे उतार कर मेरे साथ जोर जबरदस्ती गलत काम (बलात्कार) किया] He also took photographs on his mobile phone while committing the act. Out of fear, she did not inform her mother or father about the incident, and he left after committing the act. He called again on Monday at 03:30 p.m. and told her if she did not do *galat kaam* with him again, he would kill her brother. On Monday, that is,



03.02.2014, at 04:00 p.m., he came to her house and made her open the door. As soon as he entered, he forcefully removed her clothes and raped her [कपड़े उतरवाए और मेरे साथ ज़बरदस्ती गलत काम (बलात्कार) किया]. He left at 05:00 p.m. Last night, she told her parents and her father called the police. Legal be taken against Sonu, who forcefully raped her and also took her photos while doing so. He also threatened to kill her brother. Sonu also took a photo of his friend and her on his mobile phone.

15. Ext. PW1/B, the 164 statement of PW1 is seen recorded on 08.02.2014, in which she has stated that Sonu (the accused) called her on the mobile phone that was kept at home, the number of which she does not remember. Sonu told her that if she did not comply with his demands, he would kill her brother if he came between them. He told her to open the latch of the door. When she refused, he threatened to kill her brother. At 03:00 p.m., as soon as she opened the door, he entered the house. He forcibly made



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physical relations with her and also recorded a video of her. He removed her lower garments and raped her. He left at 05:00 p.m. On Monday, that is, 03.02.2014, he called her again and threatened her. He forced her to open the door latch and again established physical relations. He removed her lower garments and raped her. He then held both of her hands and raped her again. He left at 04:30 p.m. She was terrified and so did not tell anyone initially. However, seeing her quiet, her mother questioned her, at which point she told her mother everything.

16. PW1 when examined before the trial court reiterated her version in the earlier statements and stood by her case. According to PW1, her parents discussed the matter with the landlord, who advised them not to lodge a police complaint. On 06.02.2014 at 10:00 a.m., her mother (PW3) called the police. The police officials arrived, conducted inquiries, and recorded Ext. PW1/A her statement. She, along with her mother (PW3), was



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taken to the DDU Hospital by the police, where she underwent a medical examination. PW1 identified her signature on Ext. PW1/B her statement under Section 164 Cr.P.C. PW1 identified the accused in the court.

16.1 PW1 in her cross-examination admitted that the accused used to visit her house about 3 to 4 times a month, when her parents were at home, but she never talked to him. She did not raise any alarm because the accused threatened that her reputation would be spoiled among the neighbours. She denied the suggestion that she wanted to marry the accused or that, since her parents were against the said marriage, the accused had been falsely implicated at the instance of her parents. PW1 deposed that she knows Arjun, a friend of the accused. She denied the suggestion that she was having an affair with Arjun or with other boys. She denied the suggestion that the sexual intercourse was consensual or that she had got herself photographed in the company of the



accused willingly. According to PW1, the accused had threatened to kill her brother before taking her photograph. She denied having written love letters to Arjun.

17. PW2, the father of the victim, deposed that on 05.02.2014 at 09:00 a.m., he and his wife (PW3) went to work, leaving their daughter (PW1) at home. On returning at 07:00 p.m., he found his daughter (PW1) weeping. When questioned, his daughter (PW1) asked him to vacate the rented room, where they were residing. PW1 told him that in their absence, on 03.02.2014, Sonu, the accused, had intruded into the house and raped her. PW1 told him that the accused had threatened to kill her brother if she disclosed the incident to anyone. After his wife (PW2) arrived, PW1 apprised her of the facts as well. He then called the owner of the house and apprised him of the incident. The next day, the landlord came to his house and snatched his mobile phone to prevent him from calling the police. But a relative named Bittoo



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arrived, retrieved the phone from his landlord, and called the police. The police came to their house, made inquiries from PW1 and recorded the latter's statement. She was taken to the DDU Hospital by the police officials for a medical examination. On 06.02.2014, the police seized PW1's clothes *vide* Ext. PW2/A seizure memo.

17.1 PW2 in his cross-examination denied the suggestion that a quarrel had taken place between him and the accused or that he was falsely implicating the accused due to the said quarrel. He denied the suggestion that his daughter (PW1) had illicit relationships with other boys. He denied the suggestion that Arjun used to visit his house in his absence and was on friendly terms with his daughter (PW1). He identified Ext. PW2/D1 and PW2/D2, photograph of Arjun and PW1; and photograph of the accused and PW1, respectively. PW2 deposed that the photographs were taken forcibly by the accused after threatening PW1. PW1 denied that



Ext. PW2/D3 letter was in his daughter's (PW1) handwriting. He denied the suggestion that he was falsely deposing or that no such incident had occurred.

18. PW3, the mother of PW1, supported the version of PW2.

19. PW11, Dr. Shweta, Medical Officer, DDU Hospital, New Delhi, was examined to prove the MLC. She deposed that she worked alongside Dr Ritu, who prepared Ext. PW5/A MLC. PW11 identified the signature and handwriting of Dr. Ritu on Ext. PW5/A MLC of PW1 dated 06.02.2014. PW11 in her cross-examination admitted that Ext. PW5/A was not prepared by her and that PW1 was not examined in her presence. She had worked with Dr. Ritu for about three years and in the course of her duty, she had seen the latter's writing and signature on various documents.

20. The question that arises is, whether the aforesaid evidence is sufficient to find the accused guilty of having



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committed the offences punishable under Section 506 Part II IPC and Section 5(1) read with Section 6 of the PoCSO Act beyond reasonable doubt.

21. In order to establish the age of PW1, the prosecution examined PW4, a teacher from the school where PW1 was studying. PW4 deposed that PW1 was admitted in the school on 01.04.2011 *vide* admission no. 7513 in Class VI and that her date of birth, as recorded in the school register, is 09.02.2001. PW4 identified Ext. PW4/A admission register and Ext. PW4/B school leaving certificate. The incidents in the present case occurred on 01.02.2014 and 03.02.2014. Therefore, PW1 was admittedly a minor on the dates of the incident. The defence has not disputed the age of PW1 before this Court. Accordingly, the prosecution has successfully established that PW1 was a child within the meaning of the PoCSO Act.



22. The prosecution case primarily rests upon the testimony of PW1. A careful reading of Ext. PW1/A FIS/FIR, Ext. PW1/B statement under Section 164 Cr.P.C., and the testimony of PW1 before the trial court shows that she has remained consistent on all material particulars. It is well settled that conviction can be based on the sole testimony of the prosecutrix, provided that such testimony is of sterling quality, inspires confidence and is free from material contradictions or infirmities. At the same time, where the case rests solely upon the oral testimony of the prosecutrix, the court must subject such evidence to careful scrutiny, and if reasonable doubt arises as to its reliability on material particulars, the benefit thereof must go to the accused. [See **Rai Sandeep v. State (NCT of Delhi)**, (2012) 8 SCC 21 and **Nirmal Premkumar v. State**, 2024 SCC OnLine SC 260]. The evidence of PW2 and PW3 also corroborates the version of PW1.



Nothing has been brought out to discard the testimony of PW1 to PW3.

23. The defence contended that there was an unexplained delay in registration of the FIR and that PW1 was on friendly terms with other boys also. In cases involving sexual offences, particularly where the victim is a child, delay in lodging the FIR cannot be viewed with the same strictness as in ordinary criminal cases. The hesitation on the part of the victim and her family in approaching the authorities immediately is understandable. As observed by the Hon'ble Supreme Court in the dictum in **State of Himachal Pradesh v. Sanjay Kumar (2017) 2 SCC 51**, that:

“At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member,



are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism.”

24. Even if the defence version that the sexual intercourse was a consensual one is accepted, the same would not in anyway help the accused because PW1 was admittedly a minor at the relevant time and hence consent of a minor is immaterial. Therefore, even assuming such a plea to be true, the same would not exonerate the accused of criminal liability.

25. The prosecution also relies on the medical and scientific evidence. As per Ext. P-1 FSL report, male DNA profile generated from salwar and underwear of PW1 marked as Ext. I matched with the DNA profile obtained from the blood sample of the accused marked as Ext. III. Therefore, the FSL findings also



corroborate the prosecution case regarding sexual intercourse between the accused and PW1.

26. According to the prosecution, it was one Dr. Ritu, who had examined PW1 on 06.02.2014. PW11, the Medical Officer, DDU Hospital, New Delhi, deposed that the aforesaid doctor had left the services of the hospital and her whereabouts are not known. PW11 identified the handwriting and signature of the said doctor in Ext. PW5/A MLC of PW1. The testimony of PW11 that the whereabouts of Dr. Ritu is not known was never cross-examined. Here it is apposite to refer to Section 32(2) of the Indian Evidence Act, 1872 (the Evidence Act), which reads thus:-

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:



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(2)Or is made in course of business - When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business,”

(Emphasis Supplied)

26.1. In **Prithi Chand v. State of Himachal Pradesh, AIR 1989 SC 702**, it has been held that Section 32 of the Evidence Act provides that when a statement written or verbal, is made by a person in the discharge of professional duty whose attendance cannot be procured without an amount of delay, the same is relevant and admissible in evidence.

26.2. In **Rambalak Singh v. State of Bihar AIR 1964 Patna 62**, it has been held that if the doctor who had performed the autopsy was not available at the time of trial or he is abroad, the post-mortem certificate prepared by him would be admissible in evidence if the handwriting and signature of the autopsy surgeon on the post-mortem certificate are proved.



26.3. I also refer to the dictum in **Kochu and Ors. v. State of Kerala, 1978 KHC 321 : 1978 SCC OnLine Ker 79**. It was held that a post-mortem certificate is ordinarily not substantive evidence; substantive evidence is the testimony of the doctor who conducted the autopsy. However, under Section 32(2) of the Evidence Act, if the doctor is dead or unavailable, the post-mortem certificate becomes relevant and admissible. Its evidentiary value depends on the facts of each case, and the court may also rely on independent evidence regarding the cause of death. Further, under Section 67, the handwriting or signature on such a document must be proved, and this may be done through the modes provided under Section 47, such as evidence of a person acquainted with the doctor's handwriting.

27. In the case on hand, as noticed earlier, the prosecution has succeeded in showing that the presence of the doctor who had examined PW1 could not be secured without an amount of delay



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or expense. It has also been established that Ext. PW5/A MLC was prepared by the doctor in discharge of her official duty. Therefore, the MLC becomes relevant under Section 32(2) of the Evidence Act. Section 47 of the Evidence Act which deals with situations when opinions as to handwriting are relevant, says that when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of a person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. Section 67 of the Evidence Act which deals with proof of signature and handwriting of person alleged to have signed or written document, says that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. PW11 deposed that she is



familiar with the handwriting and signature of Dr. Ritu and identified the latter's signature in Ext. PW5/A MLC. Therefore, the prosecution has proved Ext.PW5/A MLC by resorting to the provisions of Section 32(2) read along with Sections 47 and 67 of the Evidence Act.

28. In the light of the testimony of PW1 coupled with the medical and scientific evidence on record, the prosecution has proved beyond reasonable doubt that the accused is guilty of offence punishable under Section 5(1) read with Section 6 of the PoCSO Act.

29. Now coming to the charge of criminal intimidation. Section 503 defines criminal intimidation as a person threatening another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to



omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. Section 506 Part II states that if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

30. In the case on hand, the materials to prove the offence of criminal intimidation are not quite satisfactory. According to PW1, the accused threatened that her brother would be killed if she did not accede to his demand of having physical relations with him. Exts. PW2/D1 and PW2/D2 are two photographs which are admitted by PW2, none other than the father of PW1. In one of the photographs, she is seen with one Arjun and in the other, with the



accused. These photographs indicate prior acquaintance and familiarity between PW1 and the accused. Further, PW1's own version is that on both the occasions, she had opened the latch/door and allowed the accused to enter her house in the absence of anyone in the house. Even according to her case, after the first alleged incident dated 01.02.2014, she again opened the door/latch for the accused on 03.02.2014 upon his asking. Therefore, it is not a case of forcible entry by the accused. On the other hand, the door seems to have been opened by PW1. The materials on record do not conclusively establish that the acts were committed under fear arising from criminal intimidation as contemplated under Sections 503 and 506 IPC. Therefore, the appellant is entitled to benefit of doubt on this aspect. But as noticed earlier, the materials show sexual intercourse of the accused with PW1, who was a minor at the time of the incident. Hence, even if the act was consensual, the



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offence punishable under Section 6 of the PoCSO Act is certainly made out.

31. In the result, the appeal is partly allowed. The conviction of the appellant is confirmed under Section 5(1) read with Section 6 of the PoCSO Act. The appellant is acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 506 Part II IPC.

32. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

MAY 14, 2026

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